



THE CHARTERED INSTITUTE OF LEGAL EXECUTIVES

UNIT 5 – EQUITY AND TRUSTS*

Time allowed: 3 hours plus 15 minutes' reading time

Instructions to Candidates

- You have **FIFTEEN** minutes to read through this question paper before the start of the examination.
- **It is strongly recommended that you use the reading time to read this question paper fully.** However, you may make notes on this question paper or in your answer booklet during this time, if you wish.
- **All questions carry 25 marks. Answer FOUR only of the following EIGHT questions. This question paper is divided into TWO sections. You MUST answer at least ONE question from Section A and at least ONE question from Section B.**
- Write in full sentences – a yes or no answer will earn no marks.
- **Candidates may use in the examination their own unmarked copy of the designated statute book: Blackstone's Statutes on Property Law 2018-2019, 26th edition, Meryl Thomas, Oxford University Press, 2018.**
- Candidates must comply with the CILEx Examination Regulations.
- Full reasoning must be shown in answers. Statutory authorities decided cases and examples should be used where appropriate.

Information for Candidates

- The mark allocation for each question and part-question is given and you are advised to take this into account in planning your work.
- Write in blue or black ink or ballpoint pen.
- Attention should be paid to clear, neat handwriting and tidy alterations.
- Complete all rough work in your answer booklet. Cross through any work you do not want marked.

Do not turn over this page until instructed by the Invigilator.

* This unit is a component of the following CILEx qualifications: **LEVEL 6 CERTIFICATE IN LAW and the LEVEL 6 PROFESSIONAL HIGHER DIPLOMA IN LAW AND PRACTICE**

SECTION A
(Answer at least one question from this section)

1. 'The two streams of jurisdiction, though they run in the same channel, run side by side and do not mingle their waters.'

(Ashburner's Principles of Equity, 2nd edition, p18)

With reference to case law and statute, examine the historical and modern-day relationship between equity and the common law.

(25 marks)

2. 'In order to render a voluntary settlement valid and effectual, the settlor must have done everything which, according to the nature of the property comprised in the settlement, was necessary to be done in order to transfer the property and render the settlement binding upon him.'

(Turner LJ in Milroy v Lord (1862) 4 De Gex, Fisher & Jones 264, 274; 45 ER 1185, 1189)

Critically discuss this statement. In particular:

- (a) explain the rule in Milroy v Lord; **(7 marks)**
- (b) compare **two** of the following exceptions to the rule in Milroy v Lord:
Re Rose; Strong v Bird; Pennington v Waine.

(18 marks)
(Total: 25 marks)

3. Discuss the situations when a resulting trust can arise and how such a trust is justified.

(25 marks)

4. Analyse and discuss the circumstances in which a stranger to a trust can be made liable in equity to pay compensation to the beneficiaries.

(25 marks)

SECTION B
(Answer at least one question from this section)

Question 1

Alice and Brian are an unmarried couple, who fell in love in 1999.

In 2000, Alice studied full-time on the Level 6 CILEx programme, while Brian did a Master's in Engineering. Brian inherited £50,000 from his uncle, which they used as a deposit on a £150,000 apartment in London (the 'Apartment'). The remaining £100,000 was funded by a mortgage in Brian's name. The Apartment was also registered in Brian's sole name.

At Brian's suggestion, the couple set up a bank account (the 'Account') to pay the mortgage and household expenses. He opened an account with a local bank, but the terms of the Account did not permit joint account holders. Brian assured Alice that the money in the Account was 'as much yours as mine'. For the next year, they paid equal amounts into the Account.

In 2001, Alice started a Chartered Legal Executive training contract. She paid her salary into the Account. Brian decided to study for a PhD and gave up his part-time job in a book shop. He stopped paying into the Account. This arrangement continued for the next two years.

In 2003, Alice qualified as a Chartered Legal Executive, earning £50,000 per year. She paid all her salary into the Account.

In 2004, Alice and Brian had a baby, Cerise. Brian stayed at home and gave up his PhD studies to look after Cerise, while Alice went back to work. Alice continued to pay all her salary into the Account.

In 2006, Brian fell in love with Donald and ended his relationship with Alice. Brian and Cerise moved into Donald's rented house. At this time, Brian's outstanding mortgage debt was £75,000 and the Apartment was valued at £200,000.

Alice continued to pay the mortgage and made regular payments to Brian, to help him look after Cerise. She has just paid the final mortgage instalment in May 2019.

Brian has been a full-time parent to Cerise for the last 15 years. Donald had paid the rent and household expenses for the rented property. Donald died last month, leaving his entire estate to charity. Brian is worried about his financial position, and he wants to sell the Apartment (now valued at £500,000).

He is willing to give half the sale proceeds to Alice, but she believes that she is entitled to a greater share than this.

Advise Alice as to whether she has any equitable interest in the Apartment and, if so, how her interest will be quantified.

(25 marks)

Turn over

Question 2

Faroque and Gaia are trustees of the Happy Family Trust Fund (the 'Trust Fund'). Gaia is a lawyer. She does not specialise in trust law, but she considers herself an expert and says she knows 'an awful lot' about it. Faroque is an old friend of the settlor. He knows nothing about trust law and tries not to get involved with the day-to-day running of the Trust Fund.

The Trust Fund was set up in January 2010 by Harry Winsor for the benefit of his wife India for her life, remainder to their children Jabril, Maya and Salma. The children are now 12, 10 and 8 respectively. The fund consisted of £750,000, which was initially invested in a savings account accruing annual interest at a rate of 1.5%.

In August 2012, India asked Gaia to reinvest some of the Trust Fund. She wanted a property abroad, so that the children could spend their school holidays there. Gaia agreed and bought a beautiful Tuscan farmhouse, costing the Trust Fund £350,000. Gaia did not take advice before purchasing the property, nor did she speak to Faroque about it.

In September 2012, Gaia received an envelope, from the estate agent she used for the purchase of the farmhouse, containing £3,000 in cash as a 'thank you'. Gaia did not tell Faroque or the beneficiaries about this money. She used the £3,000 to buy an antique vase, which is now worth £10,000.

In December 2014, Gaia and Faroque together consulted a reputable Independent Financial Adviser ('IFA'). They discussed investing £150,000 of the Trust fund in shares. The IFA recommended avoiding oil companies, as the market was performing poorly. He stated that shares in gin distilleries would be a good investment. Gaia and Faroque decided to invest £100,000 in oil companies and £50,000 in gin distilleries. The oil shares have dropped in value and are now worth only £75,000. Due to the growing popularity of gin in the UK, the shares in the gin distilleries have increased in value and are now worth £60,000.

In January 2017, India informed Gaia and Faroque that the children did not like Tuscany and she asked for the farmhouse to be sold. Gaia discussed this with Faroque, and a valuation was obtained from a qualified valuer. The valuation stated that the property was worth £300,000. Gaia had always liked it and bought it with £300,000 of her own money.

Advise Faroque and Gaia of any liability for breaches of their trustee and fiduciary duties in respect of the following:

- (a) the purchase and the sale of the Tuscan farmhouse **(13 marks)**
- (b) the £3,000 from the estate agent **(5 marks)**
- (c) investment in the shares **(7 marks)**

(Total: 25 marks)

[Note to candidates] Your advice should include information about the remedies the beneficiaries can seek, and how liability may be apportioned between the trustees. You should also consider the availability of any defences.

Question 3

Noah McCreedy, who was the founder of Easy Money Bank, has recently died. He has provided for his family and he also wanted to leave some charitable gifts.

His will contains the following provisions:

- '1) I give £50,000 to promote the music of the under-rated composer Eddie Mondey and to fund research into what links, if any, there are between his music and the great composers of the past.
- 2) I give £500,000 to my trustees to apply for the relief of ex-employees of Easy Money Bank and their families who may have come upon financial hard times.
- 3) I leave £1 million to establish the Noah McCreedy Centre for Alternative Medicine, which will provide comfort to patients and ease suffering. Patients should be charged, each according to their means.
- 4) I leave £500,000 to promote the playing of sport (eg cricket, football, snooker) among the youth of Kimpton, so that young people can come together, get fit and find a sense of community.
- 5) I leave £100,000 to promote and encourage kindness to animals.'

Kimpton is a small town on the south coast, favoured by retired people.

Advise Noah's executors as to the validity of these provisions as charitable gifts.

(25 marks)

Turn over

Question 4

Jonathan is a director of Windy Millers Ltd. He has recently discovered that his co-director, Davesh, has misappropriated a total of £85,000 from company funds and has spent it as follows.

Davesh withdrew £5,000 in cash from the company's bank account and gave it to his sister, Zaria. Zaria spent the sum on medical treatment for a long-standing condition. She believed Davesh, when he told her that he wanted to help her and that the £5,000 came from his savings.

Davesh withdrew a further £80,000 and paid it into his personal bank account, which already contained £5,000 of his own money. He withdrew £5,000 to pay off his credit card bill and then gave the remaining £80,000 to his girlfriend, Sunita. He told her that it was his contribution to the house which they were going to buy so that they could live together. Sunita was surprised that he had managed to raise the money so quickly, but Davesh told her not to ask any questions. She therefore did not press him for an explanation.

Sunita put the money in her bank account, which already had a balance of £50,000. She has used £120,000 from her account to buy a plot of land near her home in her sole name. She has now obtained planning permission to build a house on the land and the plot is now worth £150,000. She spent the remaining £10,000 on architect's plans.

Davesh has disappeared and cannot be traced. His unauthorised withdrawals from the company's bank account were not discovered earlier, because Mike, an employee in the company's accounts department, chose to ignore Davesh's activities. Mike says that he still thinks that he did nothing wrong, because he was merely following Davesh's instructions.

Advise Jonathan of any remedies, including but not limited to tracing, that Windy Millers Ltd may have against:

(a) Zaria; **(10 marks)**

(b) Sunita; **(10 marks)**

(c) Mike. **(5 marks)**

(Total: 25 marks)

End of Examination Paper

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